

VIENNA SILVER MINES CO., INC.

IBLA 82-1037

Decided September 16, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 20355 through I MC 20386.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of FLPMA or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest

the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally -- Evidence: Presumptions --Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of intention to Hold Mining Claims -- Mining Claims: Abandonment

Although, at common law, abandonment a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with the Act's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Craig T. Vincent, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Vienna Silver Mines Co., Inc., appeals the Idaho State Office, Bureau of Land Management (BLM), decision of June 7, 1982, which declared the unpatented Yukon, North Star, Silver Cliff, Last Chance Nos. 1-3, Cromwell, Ruby Nos. 1 and 2, Ione, Lion, Rebellion Extension, Rebellion Extension No. 1, Oregon Alabama, Oregon South Extension, Empire, Alta Nos. 1-5, Blue Grouse Nos. 1-5, Karen, Afton, Webfoot Extension, Webfoot Extension No. 1, Mayberry, and Mayberry No. 1 lode mining claims, I MC 20355 through I MC 20386, abandoned and void because proof of labor for 1981 was not filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states the required assessment work was performed and submitted copies of instruments recorded July 15, 1981, in Camas County, Idaho, and July 13, 1981, in Blaine County, Idaho. Appellant explained the failure to submit the copies timely to BLM was caused by simple oversight, and there was no intention to abandon the claims.

The claims were located many years prior to 1976 and, in accordance with section 314(b) of FLPMA, were recorded with BLM September 18, 1979. Annual assessment work affidavits were filed timely with BLM in 1979 and 1980.

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), reads:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice or certificate of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] Arguments similar to those here presented were considered by the Board in Lynn Keith, supra. There we held

[t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

[3] Appellant argues that it had no intention of abandoning any of the claims. That issue has been considered by the Board in earlier cases, such as John Murphy, 58 IBLA 75 (1981). There we said:

[5] Appellants also argue that the use of the term "abandonment" in section 314(c) indicates a significantly different legal connotation from the term "forfeiture," which latter term, appellants note, is typically applied to the invalidation of mining claims for failing to properly record or otherwise perfect claims under Federal statutes. Appellants assert that Congress deliberately chose the term "abandonment" over the term "forfeiture," thus showing Congressional intent to void only stale mining claims as opposed to recently-worked claims like appellants'. They argue that they could not have abandoned their claims because they had no intent to do so and because they colorably complied with section 314. The essence of this argument was presented to this Board in Lynn Keith, supra, in which we said:

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Lynn Keith, supra, at 197, 88 I.D. at 372.

This result is ineluctable because the sole and fundamental purpose of section 314 is to provide for recordation of certain named instruments. Compliance with this statute requires, by its nature, that the instruments be properly and timely delivered to the prescribed offices, and if this is not accomplished, a claimant's good-faith subjective intent to comply is no cure. [Emphasis in original.]

58 IBLA at 82-83.

Although there have been attacks on the recordation requirements of FLPMA as being unconstitutional, the courts have validated section 314, including subsection 314(c) specifically. For example, when presented with the argument that the conclusive presumption of abandonment acts as a forfeiture statute violative of due process, the Ninth Circuit, in Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), cert. denied, 102 S. Ct. 567 (1981), stated: "[W]e reject plaintiffs' conclusion that the provisions of section 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file." In this opinion the Ninth Circuit relied extensively on the reasoning and language in Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). Thus, the statute's clear provision for conclusive abandonment requires us, on these facts, to find that the decision below is correct. We regret the harshness of this unavoidable result, and we remind appellant that it may relocate the claims, subject to any valid intervening rights of third parties or of the United States and assuming the availability of the land to present mining location, by filing applicable instruments, based on the new location dates, as prescribed by FLPMA and the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Will A. Irwin
Administrative Judge

